



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 31, 1995

Mr. Patrick S. Dohoney  
Assistant District Attorney  
Tarrant County  
Justice Center  
401 W. Belknap  
Fort Worth, Texas 76196-0201

OR95-1159

Dear Mr. Dohoney:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 36106.

Tarrant County received a request for a tape or transcript of a certain 911 call and a copy of a certain offense report. You assert that the requested information is excepted from required public disclosure based on sections 552.103 and 552.111 of the Government Code.

You did not submit to this office a copy of the requested 911 tape or transcript. We asked you by letter dated October 2, 1995, to do so within seven days of receiving the letter. You informed us that due to a technical malfunction, no tape exists.

We turn to the requested offense report. Section 552.108 excepts from required public disclosure the following information:

- (a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . .
- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution.

When applying section 552.108, this office distinguishes between cases that are still under active investigation and those that are closed. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts

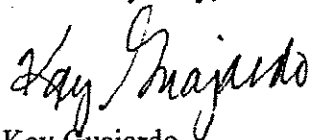
from disclosure all information except that generally found on the first page of the offense report. *See generally* Open Records Decision No. 127 (1976). You advise us that the requested information relates to an active criminal investigation.<sup>1</sup> For this reason, we conclude that the county may withhold the requested information under section 552.108 of the Government Code, except to the extent that it includes first-page offense report information. *See* Open Records Decision No. 611 (1992). We have marked the portion of the requested information that the county may withhold from public disclosure under section 552.108.

We will consider whether section 552.103 excepts from required public disclosure the information not covered by section 552.108. Section 552.103 excepts from required public disclosure information that relates to pending or reasonably anticipated litigation to which the governmental body is a party. *See* Open Records Decision No. 588 (1991). The purpose of this exception is to protect the litigation interests of the governmental body claiming the exception. Section 552.103 allows the discovery rules to control the release of information that relates to litigation. *See* Open Records Decision No. 551 (1990).

You state that the complainant may or may not desire to prosecute this case and that the criminal investigation is pending. You have submitted to this office a copy of a "non prosecution statement" signed by the complainant in which the complainant states that she "no longer wish[es] to pursue the matter" and absolves the Tarrant County Sherriff's Department of any responsibility in the investigation of the case. You do not indicate that an arrest has been made in this case. You have provided no specific information to indicate that litigation is reasonably anticipated. *See Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.) (finding arrest by itself insufficient to conclude litigation is reasonably anticipated). We, therefore, conclude that section 552.103 is inapplicable to the front page offense report information.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo  
Assistant Attorney General  
Open Records Division

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<sup>1</sup>However, we note that since the county has received the complainant's "non-prosecution statement," it is possible that the county will soon close the criminal investigation of this matter.

KHG/rho

Ref.: ID# 36106

Enclosures: Marked documents

cc: Mr. Robert J. Wershay  
P.O. Box 11725  
Fort Worth, Texas 76110  
(w/o enclosures)